



POLICE DEPARTMENT CITY OF NEW YORK

September 25, 2017

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Michael Ferrito  
Tax Registry No. 911512  
60 Precinct  
Disciplinary Case No. 2016-16203  
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**Charges and Specifications:**

1. Said Lieutenant Michael Ferrito, assigned to [the] 60th precinct, on or about October 14, 2015, during an integrity test, failed to properly supervise Members of the Service under his supervision, to wit: said Lieutenant failed to direct that a proper investigation take place. (*As amended*)  
P.G. 202-13, Page 1, Para. 4                      Lieutenant – Platoon Commander
2. Said Lieutenant Michael Ferrito, assigned to [the] 60th Precinct, on or about October 14, 2015, during an integrity test, failed and neglected to maintain his Activity Log, as required.  
P.G. 212-08, Page 1, Para. 1                      Activity Logs
3. Said Lieutenant Michael Ferrito, assigned to [the] 60th Precinct, on or about October 14, 2015, during an integrity test, failed to properly supervise Members of the Service under his supervision, to wit: said Lieutenant failed to direct that property be safeguarded and vouchered. (*As amended*)  
P.G. 202-13, Page 1, Para. 4                      Lieutenant – Platoon Commander

**Appearances:**

For the Department: Jamie Moran, Esq.  
Department Advocate's Office  
1 Police Plaza, Room 402  
New York, NY 10038

For Respondent: James Moschella, Esq.  
Karasyk & Moschella, LLP  
233 Broadway – Suite 2340  
New York, NY 10279

**Hearing Date:**  
August 3, 2017

**Decision:**  
Guilty

**Trial Commissioner:**  
ADCT Nancy R. Ryan

## **REPORT AND RECOMMENDATION**

The above-named member of the Department appeared before me on August 3, 2017.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Detective [REDACTED] Sergeant Richard Cohen, and Deputy Inspector Caroline Roe as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

## **DECISION**

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

## **FINDINGS AND ANALYSIS**

The overwhelming majority of facts in this case are undisputed. On October 14, 2015, at approximately 1230 hours, a random integrity test was conducted on Surf Avenue in Brooklyn, within the confines of the 60 Precinct, by members of Internal Affairs Bureau ("IAB") Group 52. Video and audio recordings were captured by undercover members of service assigned to IAB Group 52. (Tr. 18, 21, 73, 86).

On that day, Respondent was the second platoon commander of the 60 Precinct, responsible for overseeing all police operations during that tour of duty. Sergeant Richard Cohen was the designated patrol supervisor. (Tr. 139, 141).

The integrity test at issue was designed to assess the use of proper Department protocol with respect to safeguarding and vouchering property. (Tr. 32, 86). The complainant was portrayed by Detective [REDACTED] who was, at the time, assigned as an undercover officer to IAB. (Tr. 18-19). The integrity test was conducted using Department owned property, including approximately 80 counterfeit handbags and a black Cadillac Escalade SUV. The handbags were placed on the sidewalk next to, and on the hood of, the SUV, purportedly owned by Detective [REDACTED]. Detective [REDACTED] called 911 to make a complaint that an individual was selling merchandise on his SUV. Members of service from the 60 Precinct responded to the scene.

Sergeant Cohen responded to the radio run of a "dispute" on Surf Avenue with his operator, Officer Saluzzi, and a probationary police officer recruit.

Four separate video recordings were entered into evidence at trial. (Dept. Ex. 1). The recordings depict various portions of the integrity test from different vantage points, the pertinent portions of which are summarized below.

Approximately twelve minutes after the start of the integrity test, Sergeant Cohen and Officer Saluzzi arrived on the scene. Detective [REDACTED] told Sergeant Cohen that as he returned to his SUV, the handbag seller ran off. However, Detective [REDACTED] pointed to another individual still at the scene who he claimed had been talking to the seller. Detective [REDACTED] also alleged that the handbags had scratched the hood of his SUV.

During the course of the integrity test, Detective [REDACTED] interactions with the responding officers became increasingly excited and agitated.

About four minutes after their arrival on the scene, Sergeant Cohen and Officer Saluzzi removed the remaining handbags on the SUV's hood and place them on the sidewalk with the rest of the property. They then inspected the hood of the SUV and determined that there were not any

scratches. When Detective [REDACTED] began questioning who was going to pay for the scratches on the hood of his car, Sergeant Cohen told him that if he used a "some compound and wax" he would be able to fix the scratches. (Tr. 80).

Approximately eight minutes after Sergeant Cohen responded, Respondent and his operator arrived on the scene. Respondent testified at trial that he directed his operator to pull over when he observed Sergeant Cohen engaged in a "heated conversation" with an individual and he wanted to ensure the safety of the officers present. (Tr. 144-145). Respondent spoke to Officer Saluzzi and then to Sergeant Cohen regarding the situation. Respondent then inspected the vehicle, again spoke to Sergeant Cohen and also to Detective [REDACTED]. Detective [REDACTED] entered the SUV and left the scene, leaving the remaining handbags on the sidewalk. Respondent then entered his RMP and left the scene. Sergeant Cohen entered his RMP and left the scene shortly thereafter.

Neither Sergeant Cohen, Respondent, nor any of the other members of service at the scene took police action. Pedestrians on the sidewalk began taking handbags and walking away.

#### Specifications 1

Respondent is charged with failing to properly supervise members of the service under his supervision by failing to direct that a proper investigation take place at the scene.

As previously stated, it is undisputed that upon arrival at the scene, Respondent exited his RMP, spoke to several responding MOS, inspected the vehicle for the alleged scratches, spoke with the complainant, and spoke with Sergeant Cohen before leaving the scene. (Tr. 113-114).

According to Respondent, after inspecting the SUV, he noticed scratches on the driver's side and on the back consistent with the scratches that appeared on the hood of the SUV. He testified that the "vehicle did not have any significant damage on it ... just looked like basic wear and tear of

vehicle use.” (Tr. 149). Respondent did not hear himself on the video say “you can’t prove those zippers made those scratches,” but admits he might have said it. (Tr. 180).

Following his inspection, Respondent was of the opinion that no crime had been committed and that Detective [REDACTED] was simply exaggerating pre-existing damage. (Tr. 168, 170). He testified that the idea of preparing a police accident report in this situation was “absurd and unrealistic.” (Tr. 151). He went on to say that he “would not even consider preparing a police accident report in that scenario.” (Tr. 152). After conferring with Sergeant Cohen regarding the scratches, who agreed that there was no damage on the vehicle, Sergeant Cohen told Respondent, “...don’t worry, I have it, I can handle this job.” (Tr. 149). Respondent trusted that Sergeant Cohen would competently handle the situation, and left the scene. (Tr. 149).

With regard to the handbags, Respondent testified that while he took notice of handbags that were at the scene on the sidewalk, they constituted an “afterthought” because his focus was on the vehicle and the alleged damage. (Tr. 153). In any event, it is clear that Respondent was aware of the handbags because he can be seen in the video footage standing next to, and indicating to the handbags on the ground, while talking to Detective Rojas. (Dept. Ex. 1, “RECO0003” at 12:27)

According to Respondent, the handbags “were not really discussed,” though, in somewhat contradictory testimony, he also testified that Sergeant Cohen informed him that the seller that had been on the scene had assured him that they would pack up and leave. (Tr. 154). This testimony contradicts Sergeant Cohen’s testimony that the seller had left the scene. Sergeant Cohen, in fact, denied having any discussion with Respondent about the handbags on the sidewalk. (Tr. 80).

Furthermore, Respondent claimed at trial to not have observed any pedestrians walk up to where the property was on the ground and begin to take handbags away. He testified that if he had

seen that happening, he would have "definitely questioned who" the people taking the property were. (Tr. 170-171).

In fact, approximately 24 minutes after the test commenced, both Respondent and Sergeant Cohen re-enter their assigned vehicles. Detective [REDACTED] then drives away from the scene and while both Respondent and Sergeant Cohen are still on the scene inside their vehicles, a pedestrian is seen approaching the handbags on the ground in direct view of both supervisors. Respondent and his operator drove off as the pedestrian began taking the property. (Dept. Ex. 1, "060 PCT RANDOM TEST. 10.14.15. UC I5061" at 25:15). Based on his own testimony, upon seeing this pedestrian approach the handbags, Respondent should have directed that an investigation be undertaken of what was going on with the handbags.

Deputy Inspector Caroline Roe, commanding officer of IAB Group 52, is responsible for evaluating integrity test failures and determining the subsequent course of action to be taken against a MOS. She testified that as the lieutenant responding to the scene, Respondent "should have personally assessed what was going on and then spoken to whoever he needed to, whether it be the sergeant or the cops on scene, to determine what was going on. Make an assessment, then determine the proper course of action, and then make sure a plan of action was actually performed by either himself or his subordinates." (Tr. 89). In light of a sergeant already being on the scene, Respondent was responsible for conferring with the sergeant, making sure that the bags would be vouchered, and that the issue of damage to the vehicle would be addressed. (Tr. 89-90).

At trial, she acknowledged that Detective [REDACTED] complaint regarding the scratches on the SUV was not originally part of the integrity test, but an addition made by Detective [REDACTED] of his own accord. Although the integrity test was intended to address potential corruption issues regarding

property and not necessarily intended to test report taking procedure, she believed the addition made by Detective [REDACTED] made the scenario more realistic. (Tr. 102-103).

Deputy Inspector Roe asserted that a police report should be prepared if a complainant has alleged that there is damage to their vehicle, even if no damage can be seen, as was the case during this integrity test, because a complaint report serves to document what a complainant states at a moment in time. (Tr. 110). However, she testified that the charge served on Respondent for failure to direct that a proper investigation take place were not the result of Respondent's failure to ensure that a complaint report was generated. Instead, the charge was the result of Respondent's failure to conduct a proper investigation regarding the handbags and to ensure that were safeguarded and vouchered. (Tr. 113).

By walking around the vehicle and discussing the scratches with Sergeant Cohen and Detective [REDACTED] it is arguable that Respondent did conduct an investigation of the scratches. What is clear, however, is that Respondent failed to direct a proper investigation into the handbags that were spread out on the ground. Despite having pointed to the handbags, even under Respondent's version of events, he did not instruct Sergeant Cohen to make any further investigation into why there were handbags just lying in the street with no apparent owner. The handbags could have been stolen property or counterfeit property and were certainly not in the possession of anyone determined to be a rightful owner while Respondent was present.

Under Patrol Guide Procedure No. 202-13, lieutenants in the Department must "Supervise and review actions of patrol supervisors to ensure compliance with Department policies and procedures." Respondent failed to ensure that Sergeant Cohen, or any of the other officers on the scene were conducting an investigation into the handbags scattered on the ground. Accordingly, Respondent is found guilty of Specification 1.

Specification 2

Respondent is also charged with failing to maintain his Activity Log as required by failing to make an entry notating his stop at the integrity test. Respondent admitted that he did not make an Activity Log entry regarding the encounter on Surf Avenue because he "was not assigned the job specifically" and "only stopped to ensure and inquire what was going on." (Tr. 156). He made other entries in his Activity Log that day. (Resp. Ex. A, October 14, 2015, Activity Log entries; Tr. 158).

Patrol Guide Procedure No. 212-08, in effect at the time of this incident, states that "all uniformed members of service below the rank of captain...will maintain and make required entries..." which include, "(1) Assignments received...", (2) "Information pertinent to an assignment...", and "(3) Tasks performed." (Court Exhibit 1).

This Court rejects Respondent's assertion that because he was not personally assigned to this specific radio run, he was not required to make Activity Log entries. Respondent inserted himself into the situation when he directed his operator to pull over to assess what was going on. By doing so, Respondent became the highest ranking uniformed member of service at the scene, responsible for ensuring the situation was handled appropriately.

Under Respondent's rationale, any police action taken that did not result from a direct order or radio run, would not need to be noted in the Activity Log. However, by responding to the scene, Respondent was performing a task in furtherance of his official duties and therefore should have noted the incident in his Activity Log.

The maintenance of a complete Activity Log by each uniformed member of service required to do so, is vital to the proper and efficient functioning of the Department. Respondent is therefore found Guilty of failing to maintain his Activity Log, as required.



Specification 3

Lastly, Respondent is charged with failing to properly supervise members of the service under his supervision by failing to direct that the handbags be safeguarded and vouchered. It is undisputed that Respondent did not give Sergeant Cohen any order regarding what should be done with the handbags on the ground. (Tr. 155).

Based on the testimony of Sergeant Cohen, Respondent did not discuss the handbags with him at all. Even if the court were to ignore this testimony and base its decision solely on the testimony of Respondent, his actions constitute a failure to ensure the handbags were properly vouchered.

Patrol Guide Procedure 202-13, Page 1, Para. 4, states that a lieutenant platoon commander is to, "Supervise and review actions of patrol supervisors to ensure compliance with Department policies and procedures." One of those policies and procedures is found in Patrol Guide Procedure 218-01, which states that property, specifically property that is found, investigatory property, property that is to be held for safekeeping and peddler property, is to be invoiced.

As previously stated, Respondent testified that he noticed the handbags at the scene, but they constituted an "afterthought" because his focus was on the vehicle and the alleged damage. (Tr. 153).

Respondent testified that it was his understanding that Sergeant Cohen would "complete the job" once he left. (Tr. 156). Yet, at trial, Respondent testified that he did not expect Sergeant Cohen to take possession of the bags on the ground. (Tr. 181). He also testified that while he expected someone else to come and retrieve the handbags, he did not expect Sergeant Cohen to remain on the scene until they were retrieved, and in fact Sergeant Cohen and Respondent did leave the scene while the handbags were still on the ground. (Tr. 182). Respondent's position, based on his own testimony, was that it would be proper for the members of service on the scene to leave the area with the

handbags still on the ground. Respondent, therefore, not only failed to instruct Sergeant Cohen to voucher the handbags, but also demonstrated he did not understand the requirements of the Patrol Guide with regard to property. He did nothing, nor did he see the need to do anything, to ensure that the handbags, which would fall under the category of either found property, investigatory property, property that needed to be held for safekeeping, or peddler property, would be vouchered. This is a clear failure of Respondent's responsibilities as a supervisor.

The Court rejects Respondent's claim that the handbags constituted a so-called "afterthought" because Detective [REDACTED] was complaining so much about the alleged damage to his SUV. As a supervisor, it is incumbent on Respondent to address any and all potential issues at the scene of an incident. In failing to direct that the handbags be safeguarded and vouchered, Respondent failed to ensure that his subordinates complied with Department policy and procedure. Accordingly, Respondent is found guilty of Specification 3.

### PENALTY RECOMMENDATIONS

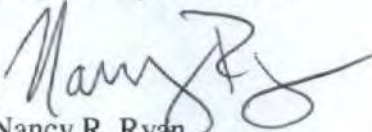
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on January 13, 1993. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate has requested that Respondent forfeit 20 vacation days as a penalty for his misconduct. In support of this request, the following cases were referred to: *Case No. 2015-13810* (June 26, 2016) (9-year sergeant forfeited 20 vacation days for failing to instruct a subordinate officer to prepare a complaint report worksheet for robbery upon responding with his subordinate to a radio transmission and after speaking to the complainant); *Case No. 2015-13900* (December 22, 2015) (9-year sergeant forfeited 20 vacation days for failing to supervise police officers under his supervision regarding the handling and investigation of an assignment involving an alleged assault

and failing to ensure that a complaint report was prepared and failing to notify or refer an alleged assault to the detective squad for further investigation); 2016-15060 (July 19, 2016) (5- year police officer forfeited 10 vacation days for failing to take abandoned property into police custody and voucher it and for failing to make required entries in his Activity Log during an integrity test); and Case No. 2013-10694 (September 16, 2014) (21-year lieutenant forfeited 10 vacation days for failing to instruct MOS under his command to prepare a complaint report for burglary after being made aware of a complaint for a residential burglary and for failing to review the complaint report prepared to ensure that it was correctly classified).

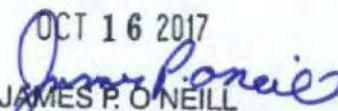
The Court finds that there exists sufficient precedent to support a penalty of 20 vacation days for Respondent. Though two cases cited by the Department Advocate imposed penalties of 10 vacation days, as a lieutenant in this Department, Respondent must continue to be held to the highest standards of conduct and act as a role model for his subordinates. His actions during the aforementioned integrity test evinced more of an attitude of avoidance, rather than a desire to make sure the situation was handled to the best abilities of all officers present. Accordingly, it is recommended that Respondent forfeit 20 vacation days.

Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**

OCT 16 2017  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
LIEUTENANT MICHAEL FERRITO  
TAX REGISTRY NO. 911512  
DISCIPLINARY CASE NO. 2016-16203

Respondent was appointed to the Department on January 13, 1993. On his last three annual performance evaluations, Respondent twice received an overall rating of 4.5 "Extremely Competent" and once received an overall rating of 4.0 "Highly Competent." He has been awarded eight medals for Excellent Police Duty. [REDACTED]

Respondent has been the subject of two prior adjudications. In 2007, he negotiated a penalty of 25 vacation days for two separate disciplinary cases in which he pled guilty to (i) being absent from his assignment without permission for 1.5 hours and (ii) writing a disparaging remark on a PBA sign posted in the muster room of his command.

Respondent also has a monitoring history. From May 16, 2007, to January 22, 2009, Respondent was on Level 2 Performance monitoring for continued poor performance. Additionally, beginning on November 17, 2016, Respondent was placed on Level 1 Discipline monitoring after the receipt of charges and specifications in the instant case. That monitoring remains ongoing.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials